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12 Corporation of the President of The Church of Jesus
13 Christ of Latter-Day Saints and Successors
14

ELECTRONICALLY FILED 08/31/07

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 DA-DAZE-NOM MANZANARES,

12 Plaintiff,

13 vs.

CASE NO. 07-CV-00076-LRH-RAM

14 ELKO COUNTY SCHOOL DISTRICT, and
15 GARY LEE JONES, SR., as agent for ELKO
16 COUNTY SCHOOL DISTRICT, and GARY LEE
17 JONES, SR., individually, and CORPORATION
18 OF THE PRESIDING BISHOP OF THE
19 CHURCH OF JESUS CHRIST OF LATTER-
20 DAY SAINTS, a foreign corporation registered to
do business in the State of Nevada;
CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS AND SUCCESSORS, a foreign
corporation registered to do business in the State
of Nevada; and Does 1-5, and XYZ Corporations
1-5.

21 Defendants.
22 _____/

23 **MOTION FOR ORDER REQUIRING PLAINTIFF TO SUBMIT TO**
24 **INDEPENDENT MENTAL EXAMINATION**
25 **& MOTION FOR ORDER SHORTENING TIME**

26 Defendants Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-
27 Day Saints and Corporation of the President of The Church of Jesus Christ of Latter-Day Saints
28 and Successors (collectively referred to herein as "The Church") hereby move this Court for an
order requiring Plaintiff Da-Daze-Nom Manzanares to submit to an independent mental

1 examination pursuant to FRCP 35. The Church has already requested Plaintiff to stipulate to
 2 such an examination, but Plaintiff has failed to respond. The Church also requests an order
 3 expediting the briefing on this motion so that the examination can be completed prior to the
 4 current date set for exchange of expert witness reports.

5 This motion is based upon the Points and Authorities set forth below, the affidavit of
 6 Clayton P. Brust, and any other materials the Court wishes to consider.

7 DATED this 31st day of August, 2007.

8 ROBISON, BELAUSTEGUI, SHARP & LOW
 9 A Professional Corporation
 71 Washington Street
 10 Reno, Nevada 89503

11 By: 

12 KENT R. ROBISON
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 16 Corporation of the President of The Church of Jesus
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18 I. MEMORANDUM OF POINTS AND AUTHORITIES

19 This matter concerns an alleged sexual relationship between Defendant Gary Lee Jones
 20 and the Plaintiff, who at the time of the alleged sexual relationship was a minor. Plaintiff is
 21 claiming mental distress and emotional damages. However, Plaintiff testified during her
 22 deposition that her childhood was rife with physical and mentally abusive circumstances. (Brust
 23 aff. ¶2). Additionally, Plaintiff displayed during her deposition that she has grown into a
 24 normal, functioning adult and member of the community in which she lives, raising serious
 25 questions regarding the emotional and psychological impact of the alleged sexual relationship.
 26 As such, The Church is entitled to conduct discovery by way of an Independent Medical
 27 Examination. Rogge v. MCA Universal Studios, 165 F.R.D. 605 (C.D. Cal. 1995)(party moving
 28

1 for physical or mental examination must show physical or mental condition is “in controversy”
2 and good cause for examination).

3
4 Independent Medical Examinations are common in litigation involving claims of
5 personal, physical and/or psychological injury. Although it is the experience of the undersigned
6 that such examinations are usually the result of stipulation between the parties, FRCP 35 is the
7 Rule that ensures a defendant the right to examine a plaintiff’s injury claims by way of
8 independent examination. FRCP 35(a) provides:

9 When the mental or physical condition (including the blood group)
10 of a party or of a person in the custody or under the legal control
11 of a party, is in controversy, the court in which the action is
12 pending may order the party to submit to a physical or mental
13 examination by a suitable licensed or certified examiner or to
14 produce for examination the person in the party’s custody or legal
15 control. The order may be made only on motion for good cause
16 shown and upon notice to the person to be examined and to all
17 parties and shall specify the time, place, manner, conditions, and
18 scope of the examination and the person or persons by whom it is
19 to be made.

20 The Church has retained the services of Dr. William Foote to perform an independent
21 psychological examination of Plaintiff to explore the impact, if any, of the alleged sexual
22 relationship she had with Defendant Gary Lee Jones. The Church has also retained Dr. Foote to
23 make determinations as to whether the alleged sexual relationship was in any way connected
24 with or related to Mr. Jones’ position with The Church. This is especially important because
25 Plaintiff specifically denied any membership in The Church, interest in The Church, or Church
26 influence in her alleged sexual relationship with Gary Jones. (Brust aff. ¶4). Dr. Foote has
27 lectured and authored articles on the issue of clergy and teacher sexual relationships with
28 minors, in addition to lecturing and authoring articles on various other aspects of forensic
psychology. A copy of Dr. Foote’s Curriculum Vitae is attached to the Affidavit of Clayton P.
Brust as Exhibit C. (Brust aff. ¶5).

The requirements set forth in FRCP 35 for the Court to order an examination of Plaintiff
have been met. Plaintiff herself put her psychological, emotional health at issue in this matter.
Further, Dr. Foote is clearly qualified to perform the examination and the parameters of the

examination are tailored to the issues presented in this matter. Accordingly, The Church respectfully requests that the Court order Plaintiff to submit to an examination by Dr. Foote on September 12 and 13, 2007 in Albuquerque, New Mexico at Dr. Foote's office located at 215 Gold Avenue SW, Ste. 202, Albuquerque, NM..

II. REQUEST FOR ORDER SHORTENING TIME/ EXPEDITED BRIEFING SCHEDULE

The Church also requests an order expediting the briefing schedule in this matter. The Church has repeatedly requested Plaintiff to stipulate to a medical examination. (Brust aff. ¶2 and 3). However, The Church has not received a response from Plaintiff since obtaining potential dates for the examination. (Brust aff. ¶3). The last day for disclosing expert opinions in this matter is September 28, 2007. Dr. Foote is available to conduct his examination of Plaintiff on September 12 and 13, 2007. Any order by the Court for Plaintiff to submit to such examination must be issued prior to those dates. As such, pursuant to LR6-1 The Church respectfully requests that the Court expedite the briefing schedule for this motion so that Plaintiff's opposition, if any, must be filed and served no later than September 7, 2007 and The Church's reply must be filed and served no later than September 8, 2007.

DATED this 31st day of August, 2007.

ROBISON, BELAUSTEGUI, SHARP & LOW
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By: 

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused a true copy of **MOTION FOR ORDER REQUIRING PLAINTIFF TO SUBMIT TO INDEPENDENT MENTAL EXAMINATION & MOTION FOR ORDER SHORTENING TIME** to be served on all parties to this action by:

☒ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☐ personal delivery/hand delivery

☒ facsimile (fax)

☐ Federal Express/UPS or other overnight delivery

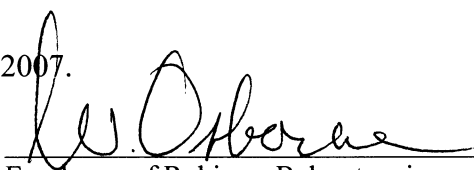
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Dated this 31st day of August, 2007.


Employee of Robison, Belaustegui,
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